

By

H. B. No.

A BILL TO BE ENTITLED

AN ACT

providing for the recordation of certain claims of water rights and imposing limitations on the exercise of such claims; providing for the adjudication and administration of water rights; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. SHORT TITLE. This Act may be cited as the Water Rights Adjudication Act.

Sec. 2. DEFINITIONS. As used in this Act:

"Section" and "Subsection" refer to parts of this Act.

"Person" means any individual, firm, association, organization, partnership, business trust, public or private corporation, company or political subdivision of the State, agency of the State, the United States, or any other legal entity.

"United States" means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies or instrumentalities authorized to act in relation thereto.

"Commission" means the Texas Water Rights Commission.

"Water right" means a right under the laws of the State of Texas to impound, divert or use public waters of the State.

"Certified filing" means a record of appropriation filed with the Board of Water Engineers under the provisions of Section 14 of Chapter 171, Acts of the 33rd Legislature of Texas, 1913, and amendments thereof.

"Permit" means a permit to appropriate public water issued by the Texas Water Rights Commission or its predecessors or successors in interest.

Sec. 3. DECLARATION OF POLICY. It is declared that the conservation and best utilization of the water resources of this State are a public necessity and it is in the interest of the people of the State to require recordation with the Commission of claims of water rights which are presently unrecorded, to limit the exercise of such claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface water resources of the State may be put to their greatest beneficial use. Therefore, the enactment of this Act is in furtherance of the public rights, duties and functions above set forth and in response to the mandate expressed in Section 59 of Article XVI of the Constitution of Texas and is in the exercise of the police powers of the State in the interest of the public welfare.

Sec. 4. RECORDATION AND LIMITATION OF CERTAIN WATER RIGHT CLAIMS. (a) This section applies to all claims of riparian water

rights, all claims under Article 7500a, Revised Civil Statutes of Texas, 1925, to impound, divert or use public waters of the State for other than domestic or livestock purposes for which no permit has been issued, all claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended, and all other claims of water rights other than claims under permits or certified filings.

(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where any claimant of a riparian right has prior to the effective date of this Act commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, such right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before January 1, 1969, every person claiming any water right to which this section applies shall file with the Commission a statement setting forth the name and address of the claimant, the location and the nature of the right claimed, the stream or watercourse and the river basin in which the right is claimed, the date of commencement of works, the dates and volumes of use of water, together with such other information as may be required by the Commission to show the nature and extent of the claim. Each claimant or owner shall be required to certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief. Any claimant desiring recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) shall file an additional sworn statement on or before July 1, 1971. The Commission shall prescribe forms for the sworn statements, but use of Commission forms shall not be mandatory.

(d) The filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state; therefore, failure to file the sworn statement or statements with the Commission in substantial compliance with this section shall extinguish and bar any claim of water rights to which this section applies, and thereafter no such right shall be recognized. The sworn statements required by this section shall be binding on the person submitting the statement and his successors in interest but shall not be binding on the Commission or any other person in interest. Nothing herein shall be construed to recognize any water right which did not exist prior to the effective date of this Act. This section shall not apply to use of water for domestic or livestock purposes, but the Commission may adopt reasonable rules and regulations governing the use of public waters for these purposes.

Sec. 5. ADJUDICATION OF WATER RIGHTS. (a) The water rights in any stream or segment thereof may be adjudicated as provided in this Act upon the Commission's own motion or upon a petition to the Commission signed by ten (10) or more claimants of water rights.

1 the source of supply or upon petition of the Texas Water Develop-
2 ment Board. Promptly after the filing of a petition, the Commis-
3 sion shall investigate the facts and conditions necessary to
4 determine whether the adjudication would be in the public interest.
5 If the Commission finds that an adjudication would be in the public
6 interest, it shall enter an order to that effect designating the
7 stream or segment to be adjudicated and directing an investigation
8 to be made of the area described to gather relevant data and
9 information essential to the proper understanding of the claims of
10 water rights involved. The results of the investigation shall be
11 reduced to writing and made a matter of record in the Commission's
12 office. In connection with the investigation, the Commission shall
13 make a map or plat showing with substantial accuracy the course of
14 the stream or segment, the location of reservoirs, diversion works
15 and places of use including lands which are being irrigated or have
16 facilities for irrigation.

17 (b) The Commission shall prepare a notice of adjudication
18 which shall describe the stream or segment to be adjudicated and
19 the date by which all claims of water rights in the stream or seg-
20 ment shall be filed with the Commission, which date shall not be
21 less than ninety (90) days after notice is issued as hereinafter
22 provided. The notice shall be published each week for two (2)
23 consecutive weeks in one (1) or more newspapers having general
24 circulation in the counties in which such stream or segment is loca-
25 ted. Notice shall also be given by certified mail to each claimant
26 of water rights whose diversion is within the stream or segment to
27 be adjudicated insofar as such claimants can reasonably be ascer-
28 tained from the records of the Commission. Every person claiming
29 a water right of any nature whatsoever, except for domestic or
30 livestock purposes, from the stream or segment under adjudication
31 shall file a sworn claim with the Commission within the time
32 prescribed in the notice, including any extensions thereof, setting
33 forth the name and post office address of the claimant, the loca-
34 tion and nature of the right claimed including a description of any
35 permit or certified filing under which the claim is made, the
36 purpose of use, a description of works and irrigated lands, if any,
37 and all other information necessary to show the nature and extent
38 of the claim. The Commission shall prescribe forms for claims, but
39 use of Commission forms shall not be mandatory.

40 (c) The Commission shall set a time and place for hearing all
41 claims. Not less than thirty (30) days prior to the commencement
42 of such hearings, the Commission shall give notice thereof by
43 certified mail to all persons who have filed claims in accordance
44 with the preceding subsection or this notice may be included in the
45 notice of adjudication provided in Subsection (b). The hearings
46 shall be conducted as provided in Section 9 of this Act.

47 (d) Upon completion of the hearings, the Commission shall
48 make a preliminary determination of the claims to water rights
49 under adjudication. One copy of the preliminary determination
50 shall be furnished without charge to each person who filed a claim
51 in accordance with Subsection (b). Additional copies of the
52 preliminary determination shall be made available for public
53 inspection at convenient locations throughout the river basin, as
54 designated by the Commission. Copies shall also be made available

1 of reproduction. All evidence presented to or considered by the
2 Commission shall be open to public inspection for a period of not
3 less than sixty (60) days, as fixed by the Commission, after the
4 notice prescribed in this subsection is issued. The Commission
5 shall also set a date for filing contests on the preliminary deter-
6 mination, which date shall not be less than thirty (30) days after
7 the period for public inspection of the evidence presented to or
8 considered by the Commission has closed. Promptly after the
9 preliminary determination has been made, notice of the fact shall
10 be published each week for two (2) consecutive weeks in one (1) or
11 more newspapers having general circulation in the river basin in
12 which the stream or segment is located. Notice shall also be
13 sent by certified mail to each claimant of water rights within the
14 river basin in which the stream or segment is located, insofar as
15 such claimants can be reasonably ascertained from the records of
16 the Commission. Each notice shall also state the place and the
17 period of time that the preliminary determination and evidence
18 presented to or considered by the Commission will be open for public
19 inspection, the locations throughout the river basin where copies
20 of the preliminary determination will be available for public
21 inspection, the method of ordering copies of the preliminary
22 determination and the charge therefor, and the date by which
23 contests on the preliminary determination must be filed.

24 (e) If any water right claimant affected by the preliminary
25 determination, including claimants to water rights within the river
26 basin but outside the stream or segment under adjudication, disputes
27 the preliminary determination, he shall within the time for filing
28 contests prescribed in the notice, including any extensions
29 thereof, file a written contest with the Commission, stating with
30 reasonable certainty the grounds of his contest, which statement
31 shall be verified by the affidavit of the contestant, his agent,
32 or attorney. If the contest is directed against the preliminary
33 determination of the rights of other claimants, a copy shall be
34 served on each such claimant or his attorney by certified mail, and
35 proof of service shall be filed with the Commission. After the time
36 for filing contests has expired the Commission shall prepare a
37 notice setting forth the part of the preliminary determination to
38 which each contest is directed and the time and place of hearing of
39 the contest. The notice shall be sent to each claimant of water
40 rights within the river basin in which the stream or segment is
41 located insofar as such claimants can reasonably be ascertained
42 from the records of the Commission. The hearing shall be conducted
43 as provided in Section 9 of this Act.

44 (f) Upon completion of hearings on all contests the Commis-
45 sion shall make a final determination of the claims to water rights
46 under adjudication. A copy of the final determination and any
47 modification thereof shall be sent to each claimant whose rights
48 are adjudicated and each contesting party. Within thirty (30) days
49 from the date of the final determination any affected party may
50 apply to the Commission for a rehearing. Applications for rehearing
51 which in the opinion of the Commission are without merit may be
52 denied without notice to other parties, but no application for
53 rehearing shall be granted without notice to each claimant whose
54 rights are adjudicated and each contesting party.

1 (g) As soon as practicable after the disposition of all
2 applications for rehearing, the Commission shall file an action for
3 judicial review of its final determination in a district court as
4 determined by the Commission. Any district court of general
5 jurisdiction shall have venue of such action. At the time the
6 action is filed, the Commission shall file with the court a certi-
7 fied copy of its final determination, together with all evidence
8 presented to or considered by the Commission. The Commission shall
9 obtain an order from the court fixing a time not less than thirty
10 (30) days from the date of the order for the filing of exceptions to
11 the Commission's final determination and fixing a time not less than
12 sixty (60) days from the date of the order for the commencement of
13 hearings on exceptions. The Commission shall immediately give
14 written notice of the court's order by certified mail to all parties
15 who appeared in the proceedings before the Commission, and proof of
16 notice shall be filed with the court.

17 (h) Any affected person who appeared in the proceeding before
18 the Commission may file exceptions to the final determination which
19 exceptions shall state with a reasonable degree of certainty the
20 grounds for the exception and shall specify the particular para-
21 graphs and pages of the determination to which exception is taken.
22 Three (3) copies of such exceptions shall be filed in court, and a
23 copy shall be served on the Commission. The Commission shall make
24 copies of all exceptions available at reasonable cost, based upon
25 the cost of reproduction.

26 (i) The court shall hear any exceptions which have been
27 filed, and the Commission and all affected persons appearing in
28 the proceedings before the Commission shall be entitled to appear
29 and be heard on the exceptions. Other parties in interest may be
30 permitted to appear and be heard by leave of court for good cause
31 shown. The court shall have the power to conduct nonjury hearings
32 and proceedings at any convenient location within the State. Actual
33 expenses incurred by the court outside of its judicial district
34 shall be taxed as costs.

35 (j) In passing on exceptions the court shall determine all
36 issues of law and fact independently of the Commission's deter-
37 mination. The substantial evidence rule shall not be used. The
38 court shall not consider any exception which was not brought to the
39 Commission's attention by application for rehearing, nor shall the
40 court consider any issue of fact raised by an exception unless the
41 record of evidence before the Commission reveals that the question
42 was genuinely in issue before the Commission. Any party in interest
43 may demand a jury trial of any such issue of fact, but the court
44 may in its discretion have a separate trial with a separate jury of
45 any such issue or issues.

46 (k) Any exception heard by the court without a jury may be
47 resolved on the record of evidence before the Commission, or the
48 court may in its discretion take additional evidence or direct that
49 additional evidence be heard by the Commission. After final hearing
50 the court shall enter a decree affirming or modifying the order of
51 the Commission and may assess such costs as it may deem just.
52 Appeal may be taken from the decree in the same manner and with
53 the same effect as in other civil cases. The final decree in
54 every water right adjudication shall be final and conclusive as to

1 all existing and prior rights and claims to water rights in the
2 adjudicated stream or segment and shall be binding on all claimants
3 to water rights within the river basin, including claimants to
4 water rights outside the adjudicated stream or segment. Except
5 for domestic and livestock purposes or rights subsequently acquired
6 by permit, no water right shall be recognized in the adjudicated
7 stream or segment unless included in the final decree.

8 (l) Upon the final determination of the rights to the waters
9 of any stream and the expiration of the time for rehearing provided
10 in Section (k) hereof, the Commission shall issue to each person
11 adjudicated a water right a certificate of adjudication, signed by
12 the Chairman and affixed with the seal of the Commission. The
13 certificate of adjudication shall refer to the final decree of
14 adjudication to which it relates and shall state the name and post
15 office address of the holder of the adjudicated right, the priority,
16 extent, and purpose of the right, and if for irrigation purposes,
17 a description of the irrigated land, together with all other
18 information relating to the adjudicated right contained in the final
19 decree.

20 (m) The certificate of adjudication or a true copy shall be
21 transmitted by the Commission to the county clerk of each county
22 in which the appropriation is made. Upon receipt of the recording
23 fee from the holder of the certificate, the county clerk shall
24 file and record the same in a well-bound book provided and kept for
25 that purpose only, and shall index the same alphabetically under
26 the name of the holder of the certificate of adjudication and of
27 the stream or source of water supply, and, thereupon, shall deliver
28 the certificate of adjudication, upon demand, to the holder.

29 Sec. 6. PERMITS ISSUED AFTER ADJUDICATION. Permits, other
30 than temporary permits, issued by the Commission to appropriate
31 water from an adjudicated stream or segment shall be subject to
32 administration in the same manner as provided in this Act for an
33 adjudicated water right.

34 Sec. 7. ABATEMENT OF CERTAIN CIVIL ACTIONS. Nothing in
35 this Act shall prevent or preclude any person claiming the right
36 to divert water from a stream from filing and prosecuting to
37 conclusion a suit against other claimants of the right to divert
38 or use water from the same stream; provided, however, that if the
39 Commission has ordered a determination of water rights as provided
40 in Section 5 of this Act, or if the Commission shall order such a
41 determination within ninety (90) days after notice of the filing
42 of such a suit, the suit shall be abated on motion of the Commis-
43 sion or any party in interest as to any issues involved in the
44 water rights determination, except that the court may grant or
45 continue any temporary relief necessary to preserve the status quo
46 pending final determination of the water rights involved.

47 Sec. 8. ADMINISTRATION OF WATER RIGHTS. (a) The Commission
48 shall divide the State into water divisions for the purpose of
49 administering adjudicated water rights. Water divisions may be
50 created from time to time, as the necessity therefor arises, and
51 shall be constituted to secure the best protection to the holders
52 of water rights and the most economical supervision on the part of
53 the State.
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1 (b) One watermaster may be appointed by the Commission for
2 each water division. The watermaster shall hold office until a
3 successor is appointed and may be removed at any time by the
4 Commission. The Commission may employ assistant watermasters and
5 other employees necessary to aid the watermaster in the discharge
6 of his duties. In any water division in which the office of water-
7 master is vacant, the Commission shall have the powers and authority
8 of a watermaster. The watermaster shall perform his duties under
9 the general direction and supervision of the Commission and shall
10 be responsible to the Commission for the proper performance of his
11 duties. Any person dissatisfied with any action of a watermaster
12 may apply to the Commission for relief.

13 (c) It shall be the duty of the watermaster to divide the
14 water of the streams or other sources of supply of his division in
15 accordance with the adjudicated water rights, and to regulate or
16 cause to be regulated the controlling works of reservoirs and
17 diversion works in time of water shortage, as may be necessary by
18 reason of the rights existing in the streams of his division, or
19 as may be necessary to prevent the waste of water or its diversion
20 or taking or storage or use in excess of the quantities to which
21 the holders of water rights are lawfully entitled. The water master
22 shall also have authority to regulate the distribution of water
23 from any system of works that serves users whose rights have been
24 separately determined. Whenever, in the performance of his duties,
25 the watermaster regulates diversion works or the controlling works
26 of reservoirs, it shall be his duty to attach to such diversion
27 works or controlling works a written notice properly dated and
28 signed, setting forth the facts that such diversion works or
29 controlling works have been properly regulated and are wholly under
30 his control, and such notice shall be legal notice to all parties
31 interested in the diversion and distribution of the water served by
32 such diversion works or reservoir.

33 (d) The compensation and necessary expenses of a water-
34 master, assistant watermasters and other necessary employees shall
35 be paid by the Commission, and the Commission shall be reimbursed
36 for such compensation and expenses by the holders of water rights
37 that have been determined or adjudicated and whose rights are so
38 administered. The Commission, after the adjudication decree
39 becomes final, shall notify each holder of water rights under the
40 decree of the amount of compensation and expenses that will be
41 required annually for the administration of the water rights so
42 determined. Following a public hearing under the provisions of
43 Section 9, the Commission shall issue an order assessing the annual
44 cost against the holders of water rights to whom the water will be
45 distributed under the final decree. The Commission order shall
46 equitably apportion costs; it may provide for payments in install-
47 ments and shall specify the dates by which payments shall be made
48 to the Commission. The Commission shall transmit all collections
49 to the State Treasurer. No water shall be diverted, taken or
50 stored by or delivered to any person while delinquent in the payment
51 of his assessed costs. Each order assessing costs shall remain in
52 effect until further order of the Commission and may be modified,
53 revoked or superseded by subsequent order of the Commission.
54 Supplementary orders may be issued from time to time to apply to
20 55 new diversions

1 (e) The owner of any works for the diversion or storage of
2 water shall maintain to the satisfaction of the Commission a
3 substantial headgate at the point of diversion, or a gate on each
4 discharge pipe of a pumping plant, of such construction that it can
5 be locked at the proper place by the watermaster, or a suitable
6 outlet in a dam to allow the free passage of water that the owner
7 of the dam is not entitled to divert or impound, the suitability
8 of such outlet to be determined by the Commission. The owner of
9 any works for the diversion or taking, or storage, or distribution
10 of water, when required by the Commission, shall construct and
11 maintain suitable measuring devices at such points as will enable
12 the watermaster to determine the quantities of water to be diverted
13 or taken, or stored or released, or distributed, in order to
14 satisfy the rights of the respective users thereof. The Commission
15 may order flumes to be installed along the line of any ditch if
16 necessary for the protection of water rights or other property. If
17 the owner of any such works shall refuse or neglect to comply with
18 the directions of the Commission, as provided in this section, the
19 Commission after ten (10) days' notice or such additional time as
20 shall be reasonable under the circumstances, may order the water-
21 master to make such adjustment of the control works as will prevent
22 the owner of the works from diverting or taking or storing or
23 distributing any of the water to which he would otherwise be
24 entitled until he shall have made full compliance with the order of
25 the Commission.

26 (f) Any person injured by the exercise of the duties
27 prescribed by this Act may bring suit against the Commission to
28 review the action or to obtain an injunction. If the water right
29 involved has been adjudicated as provided in this Act, an injunction
30 shall be issued only if it is shown that the Commission has failed
31 to carry into effect the decree adjudicating the water right
32 involved.

33 (g) In any area in which water rights of record in the office
34 of the Commission have not been adjudicated, the holders or claim-
35 ants of such rights and the Commission may enter into a written
36 agreement for their administration. The agreement shall provide the
37 basis and manner of distribution of the waters to which the agree-
38 ment relates; the services of a special watermaster, and assis-
39 tants if necessary, to carry out the agreement; and the allocation,
40 collection and payment of the annual costs of administration; and
41 shall be recorded in the offices of the Commission and of the county
42 clerk of each county in which any of the works or lands affected
43 by the agreement are located. The administration of water rights
44 under any such agreement shall be governed by the provision of this
45 Section other than Subsection (d). No such agreement shall impair
46 any vested right to the use of water nor create any additional
47 rights to the use of any water.

48 Sec. 9. NOTICE AND PROCEDURE. Notice of any hearing or other
49 proceeding ordered by the Commission pursuant to this Act shall be
50 given in the manner prescribed in the Rules and Regulations of the
51 Commission unless otherwise specifically provided for in this Act.
52 In any proceeding in any part of the State, the Commission shall
53 have the power to take evidence, including the testimony of wit-
54 nesses; to administer oaths; to issue subpoenas and compel the

1 attendance of witnesses; which subpoenas shall be served in the
2 same manner as subpoenas issued out of the courts of the State; to
3 compel witnesses to testify and give evidence; to order the taking
4 of depositions and issue commissions therefor in the same manner
5 as depositions in civil actions. The evidence may be taken by a
6 duly appointed reporter before the Commission or its authorized rep-
7 resentative who also shall have the power to administer oaths.
8 Witnesses shall receive the same fees and mileage as witnesses in
9 civil actions, to be paid by the party calling such witnesses.
10 Fees and mileage of witnesses called by the Commission shall be
11 paid out of funds made available to the Commission by the Legis-
12 lature. In case of neglect or refusal on the part of any person to
13 comply with any order or subpoena issued by the Commission, or the
14 refusal of any witness to testify to any matter regarding which he
15 may lawfully be interrogated, he shall be punished in the manner
16 provided by law for such disobedience in civil actions, upon appli-
17 cation therefor by the Commission to a district court of the county
18 in which the proceeding is held. The Commission may adjourn the
19 proceedings from time to time and from place to place, and upon the
20 conclusion of the proceeding, it shall render a decision as to the
21 matters concerning which the proceeding was held.

22 Sec. 10. CANCELLATION OF WATER RIGHTS. Nothing in this Act
23 shall recognize any abandoned or cancelled water right or impair in
24 any way the power of the Commission under general law to forfeit,
25 cancel or find abandoned any water right, including adjudicated
26 water rights.

27 Sec. 11. GROUNDWATER NOT AFFECTED. This Act shall not apply
28 to underground water as defined in Acts 1925, 39th Legislature,
29 Chapter 25, as amended by Acts 1949, 51st Legislature, Chapter 306
30 (codified as Article 7860-3c, Sec. A (3)).

31 Sec. 12. SAVING CLAUSE. No action or proceeding commenced
32 prior to the effective date of this Act, and no right accrued save
33 and except those specifically provided for herein, shall be affected
34 by its enactment.

35 Sec. 13. SEVERABILITY. If any provision of this Act or the
36 application thereof to any person or circumstances, is held to be
37 unconstitutional, the remainder of the Act, or the application of
38 such provisions to other persons or circumstances, shall not be
39 affected thereby.

40 Sec. 14. REPEALER. All laws or parts of laws in conflict
41 herewith are repealed to the extent of such conflict only.

42 Sec. 15. EMERGENCY CLAUSE. The fact that the present laws
43 relating to the adjudication and administration of surface water
44 rights in Texas are inadequate, and the fact that there is a need
45 for procedures to insure the fair and equitable administration of
46 rights to those waters create an emergency and an imperative public
47 necessity that the Constitutional Rule requiring bills to be read
48 on three several days in each house be suspended, and this Rule is
49 hereby suspended, and that this Act shall take effect and be in
50 force according to its terms, and it is so enacted.
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H.B.No. 447 By Moncy Clayton
Cole
et al

A BILL

TO BE ENTITLED

AN ACT providing for the recorda-
tion of certain claims of
water rights and imposing
limitations on the exer-
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and administration of water
rights; and declaring an
emergency.

Filed Feb. 9, 1967

FEB 13 1967 READ 1st TIME
AND REFERRED TO COMMITTEE ON
Conservation
Reclamation